

USAWC STRATEGY RESEARCH PROJECT

THE UNITED NATIONS AND THE USE OF FORCE:  
REVISING ARTICLE 51

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## ABSTRACT

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Article 51 of the United Nations Charter should be revised in order to address the 21st century's global war on terrorism and the use of preemptive war. Regardless of the views of some skeptics, the United Nations will continue to play a major role in world events since this organization has significant impacts on every nation-state. Never again can any nation-state hope to enjoy protection, isolation and freedom from terrorist attacks. All states are vulnerable to terrorist attacks. This very fact is forcing nation-states to seek peace and security through the auspices of the United Nations. In order for the United Nations to become a more relevant organization, it must give both power and authority to its Members. The way to accomplish this is to revise Article 51 of the United Nations' Charter; restoring its relevance would enable the United Nations to create an effective forum for carefully deliberating preemptive uses of force. The process of revising Article 51 could lead to a healthy dialogue on when and if preemptive force should be used. The United Nations must develop a better way to enforce its own resolutions and mandates; it can no longer afford to pass resolutions and then not implement them, responding only with further discussions and more futile resolutions. History has demonstrated, terrorists do not take a "wait and see" position.



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## THE UNITED NATIONS AND THE USE OF FORCE: REVISING ARTICLE 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council under the present Charter to take at any time such action it deem necessary in order to maintain or restore international peace and security.

- Article 51 to the Charter of the United Nations

### ISSUE FOR DECISION

Article 51 of the United Nations Charter should be revised in order to address the 21st century's global war on terrorism and the use of preemptive war. Regardless of the views of some skeptics, the United Nations will continue to play a major role in world events since this organization has significant impacts on every nation-state. Never again can any nation-state hope to enjoy protection, isolation and freedom from terrorist attacks. All states are vulnerable to terrorist attacks. This very fact is forcing nation-states to seek peace and security through the auspices of the United Nations. In order for the United Nations to become a relevant organization, it must give both power and authority to its Members. The way to accomplish this is to revise Article 51 of the United Nations Charter; restoring its relevance would enable the United Nations to create an effective forum for carefully deliberating preventive and preemptive uses of force. The process of revising Article 51 could lead to a healthy dialogue on when and if preemptive force should be used. The United Nations must develop a better way to enforce its own resolutions and mandates; it can no longer afford to pass resolutions and then not implement them, responding only with further discussions and more futile resolutions. History has demonstrated, terrorists do not take a "wait and see" position.

### BACKGROUND

#### FIFTY-NINE YEARS OF EFFORT

On October 24, 2004, the United Nations celebrated its 59<sup>th</sup> anniversary. At the creation of the United Nations in 1945, there were 51 Members; in 2005 there are 191.<sup>1</sup> The General Assembly has transformed from a body composed of States that largely resembled one another to one whose membership varies dramatically.<sup>2</sup> Yet, the current Member States are still committed to the organization's original principles and goals as expressed in the Charter: to maintain international peace and security, and to suppress acts of aggression that threaten

world peace.<sup>3</sup> Under the Charter, Member States agree to “settle disputes by peaceful means and refrain from threatening or using force against other States.”<sup>4</sup> The threats today are from non-State actors (e.g. Al-Qaida) as well as Nation-States sponsoring, harboring or financing terrorism. The case for security today rests on three basic pillars; threats recognize no national boundaries, are connected and must be addressed at the global, regional and national levels; no State, no matter how powerful, can by its own efforts alone make itself invulnerable to today’s threats; and it cannot be assumed that every State will always be able, or willing, to meet its responsibility to protect its own peoples and not to harm its neighbors.<sup>5</sup>

For 59 years, the United Nations has made notable efforts to suppress acts of aggression that threaten peace and stability in the world. It has been credited with negotiating many peaceful settlements that have ended regional conflicts. The United Nations helped defuse the Cuban Missile Crisis in 1962 and the Middle East crisis in 1973.<sup>6</sup> Recent cases include:

- On July 20, 1987, the United Nations Security Council unanimously passed Resolution 598, urging Iraq and Iran to accept a cease fire to the eight year war, withdraw their forces to internationally recognized boundaries, and settle their frontier disputes by negotiations held under the auspices of the United Nations. Iraq agreed to abide by the terms of the resolutions and Iran formally declared its acceptance of the resolution on August 20, 1988.<sup>7</sup>
- The withdrawal of Soviet troops from Afghanistan as the Undersecretary-General for Special Political Affairs, Diego Cordovez, negotiated the Geneva Accords which provided the structure for the eventual Soviet withdrawal from Afghanistan.<sup>8</sup>
- In the 1990s, the United Nations was instrumental in restoring sovereignty to Kuwait and played a major role in ending the civil war in El Salvador whereby the United Nations sponsored talks, which culminated in the January 1992 signing of the Peace Accords, ending 12 years of civil war.<sup>9</sup>
- When, in September 1999, a campaign of violence forced some 200,000 East Timorese to flee their homes following a vote on self-determination, the United Nations authorized the dispatch of an international security force, which helped restore order.<sup>10</sup>

In most cases, the United Nations has used silent diplomacy, deterrence and coercion to avert imminent wars and halt aggression.

However, to deter aggression, the United Nations has “no power to make laws,”<sup>11</sup> much less to enforce them. Furthermore, since the United Nations represent sovereign and equal states its non-binding resolutions represent the opinion or peoples as expressed through their governments.<sup>12</sup> The United Nations therefore lacks real authority to intervene in their affairs.

This is a major shortcoming. Currently, the United Nations must appeal to common interests to rally nations to observe the principle and goals of the United Nations. This kind of consensus diplomacy led to the passage of United Nations resolutions to end the Persian Gulf crisis in August 1990 when Iraq invaded then annexed Kuwait.<sup>13</sup> This created an armed conflict between Iraq and a coalition of 32 nations. Would this be the beginning of the end for battles whereby large armies confront each other in an arena governed by the rules of the Geneva Convention? What has happened since the Persian Gulf War that would have the United Nations examining conflict from a different lens?

The world changed dramatically as the result of the September 11<sup>th</sup> attack on the United States of America. A different kind of enemy attacked world peace. This enemy did not march in formation or wear uniforms, nor did this enemy engage in force-on-force warfare. Instead, this new genre of enemy attacked without observing common rules of engagement or traditional weapons; instead, this enemy used commercial airlines as the weapon of choice and targeted non-combatants. This enemy was cold, calculating and ruthless; however, he is a thinking enemy with considerable patience. This enemy acted on behalf of no state. Indeed, it is unlikely that diplomacy or deterrence could have prevented the September 11<sup>th</sup> attacks.<sup>14</sup> As the 21<sup>st</sup> century began, an outbreak of terrorism spread fear and horror around the world. As terrifying as these acts of cowardice are, those who were alive at the end of the 19<sup>th</sup> century and beginning of the 20<sup>th</sup> century are all too familiar with the fear that was generated by terrorism.

- In 1881, a bomb was thrown under Tsar Alexander II's iron-clad carriage to stop it. The assassin was captured immediately but as Tsar Alexander II approached the assassin to question him another assassin threw a bomb and killed Alexander II in St. Petersburg.<sup>15</sup>
- In 1894 the French President Sadi Carnot, after delivering a speech in which he appeared to imply that he nevertheless would not seek re-election, was stabbed by an Italian anarchist.<sup>16</sup>
- In 1897 the Spanish prime minister was assassinated just as Cuba's drive for independence was boiling over; within a year, Spain was at war with the US<sup>17</sup>
- In 1901 William McKinley, President of the United States was assassinated by a 28-year-old anarchist, Leon Czolgosz.<sup>18</sup>
- Thirteen years later a Serbian terrorist shot and killed Archduke Ferdinand, heir to the throne of Austria, and triggered World War I.<sup>19</sup>

Terrorism of yesterday is similar to terrorism today, only now weapons of mass destruction make stopping terrorism a top priority for the international community and require that terrorism be redefined. How is terrorism defined today?

The United Nations states in its 'Report of the Secretary-General's High-level Panel on Threats, Challenges and Change' that the definition of terrorism should include the following<sup>20</sup>:

- Recognition, in the preamble, that State use of force against civilians is regulated by the Geneva Convention and other instruments, and, if of sufficient scale, constitutes a war crime by the persons concerned or a crime against humanity.
- Restatement that acts under the 12 preceding anti-terrorism conventions are terrorism, and a declaration that they are a crime under international law; and restatement that terrorism in time of armed conflict is prohibited by the Geneva Convention and Protocols.
- Reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004).
- Description of terrorism as any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Convention and Security Council Resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

With the added threat of weapons of mass destruction, the United States, the United Nations and the world must deal with a new kind of opposition—one that disregards international authority. No longer will terrorists single out individuals to send a message, instead they are willing to use suicide bombers to kill as many civilians as possible in order to achieve their goals of creating chaos, completely destabilizing the entire world, and breeding hatred and distrust among coalition forces and the western world. This way of warring is not new to America or to the world. In the article, *Infoplease: Terrorist Attacks*, the author demonstrates that terrorist attacks can be tracked back to the early 20<sup>th</sup> Century<sup>21</sup>:

- On September 16, 1920, a TNT bomb planted in unattended horse-drawn wagon exploded on Wall Street (New York City) opposite the House of Morgan, killing 35 people and injuring a hundred more.

- January 24, 1975, New York City, a bomb set off in the historic Fraunces Tavern killed 4 and injured more than 50 people. The Puerto Rico nationalist group (FALN) claimed responsibility, and police tied 13 other bombings to the group.
- November 4, 1979, Tehran, Iran, Iranian radical students seized the United States Embassy, taking 66 hostages, 14 were later released and the remaining 52 were freed after 444 days on the day of President Ronald Reagan's Inauguration.
- April 18, 1983, Beirut, Lebanon, Shiite suicide bombers exploded a truck near United States military barracks at the Beirut airport, killing 241 Marines; minutes later a second bomb killed 58 French paratroopers in their barracks in West Beirut.
- While waving to a crowd from an open car in St. Peter's Square in May 1981, Pope John Paul II was struck by two bullets.

These attacks gave birth to this new kind of enemy. How can the United States and the United Nations counter such attacks?

#### PREVENTIVE WAR AND PREEMPTION

When the terrorists attacked the United States on September 11, 2001, the United Nations Security Council acted quickly, adopting a wide-ranging resolution which obligated States to ensure that any person who participates in financing, planning, preparing, perpetrating or supporting terrorist acts is brought to justice, as well as to establish such acts as serious criminal offenses under domestic law.<sup>22</sup> The United States immediately committed military forces to Afghanistan for a serious confrontation with this new enemy; however, the Bush Administration believed additional action was necessary. During the summer and fall of 2002, the question of the possible use of "preemptive" military force by the United States to defend its security was raised by the Bush Administration, including possible use of such force against Iraq. In mid-September 2002, the Bush Administration published the new National Security Strategy which unambiguously stated that the United States was prepared to use preemptive military force to prevent United States enemies from using weapons of mass destruction (WMD) against it or its friends or allies.<sup>23</sup> It stated that "The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security...to forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively."<sup>24</sup>

This preemptive language is articulated throughout the Bush Administration's speeches and presentations. During a speech in February 2004, Secretary of State Colin L. Powell declared that "the National Security Strategy made the concept of preemptive [war] explicit in

the heady aftermath of September 11, and it did so for obvious reasons...you do not wait for it to strike; you do not allow future attacks to happen before you take action."<sup>25</sup> Vice President Cheney's Speech on preemptive military action is clearly expressed, "Against such enemies, America and the civilized world have only one option: wherever terrorists operate, we must find them where they dwell, stop them in their planning, and one by one bring them to justice...as we face this prospect, old doctrines of security do not apply."<sup>26</sup> Are there any guidelines for the policy of preventive or preemption war? If so, what are the specific guidelines and definition of such a policy?

Specific guidelines for this policy are well stated in the United States *Policy on Preventive War and Preemption*, which clearly asserts that "Preventive war is based on the concept that war is inevitable, and that it is better to fight now while the costs are low rather than later when the costs are high. It is a deliberate decision to begin a war."<sup>27</sup> Other definitions include, "a significant use of military force against a nation at some point in the future, whether months or years."<sup>28</sup> This action is not in keeping with the boundaries of the idea of preemptive use of military force. Preemption is nothing more than a quick draw; upon detecting evidence that an opponent is about to attack, a preemptive nation "beats the opponent to the punch" and attacks first in order to avert the impending strike.<sup>29</sup> Another definition is the use of military force is considered to be the taking of military action by the United States against another nation so as to prevent or mitigate a presumed military attack or use of force by that nation against the United States. States that doubt the effectiveness of preventive war often adopt preemptive strategies.<sup>30</sup> Finally, the Department of Defense (DoD) definition for preventive war is "A war initiated in the belief that military conflict, while not imminent, is inevitable, and that to delay would involve greater risk; while DoD's definition for preemptive war is "An attack initiated on the basis of incontrovertible evidence that an enemy attack is imminent. However, the decision to use preemptive force, according to critics, "lies outside the scope of existing international law and behavior norms established by the United Nations."<sup>31</sup> Given such serious reservations, how has the United Nations reacted to acts of preemptive or preventive war?

#### INTERNATIONAL REACTION

Kofi Annan, Secretary-General of the United Nations, reacted to the Iraq War (a preemptive war) by announcing on the British Broadcasting Corporation that the United States led coalition attack on Iraq, a war to remove Saddam Hussein's regime, was "illegal" and "not in conformity with the United Nations Charter from our point of view."<sup>32</sup> Secretary General Annan was referring to the articles of the Charter that speak to the use of force (Article 51): "Nothing in

the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”<sup>33</sup> According to the journal *Arab Media Watch* “A preemptive invasion of Iraq would also violate the United Nations Charter, which is a treaty and part of the supreme law of the United States under Article 6, Clause 2 of the Constitution. It requires the United States to settle all disputes by peaceful means and not use military force in the absence of an armed attack.”<sup>34</sup> The United Nations Charter empowers only the Security Council to authorize the use of force, unless a Member State is acting in individual or collective self-defense. Iraq has not attacked this country or any other country in the past 11 years. None of Iraq’s neighbors had appealed to the Security Council to protect them from an imminent attack by Iraq. The Portland Independent Media Center believes the Iraq war did not fulfill the criteria of a preventive war, stating “America carried out a preemptive war, not a preventive war.”<sup>35</sup> So what is the difference?

While a preventive war requires the fulfillment of criteria on the immediate danger of the intentional aggression of a State, the criteria for a preemptive strike or preemptive war are unknown.<sup>36</sup> A war would be legitimate as a preventive war if “preventive self-defense” occurred according to the *Caroline proviso* that no other choice of means existed or the possibility of negotiations was exhausted.<sup>37</sup> A preventive war is only conceivable measured by such criteria. There can be no talk of the Iraq war as a preventive war since an armed attack on the United States or on a bordering state of Iraq was not imminent. The *Caroline proviso* goes on to say that “An aggression must occur or be imminent for a preventive war. Violence may not be practiced in international community under any other signs, not even on account of differences in political or religious viewpoints or to overthrow an unpopular dictator through an intervention from the outside. Belligerent acts against a State are illegitimate per se, if no immediate danger of war is demonstrated. In general, three basic conditions must be met to justify an immediate threat: an active war preparation, a manifest intention of inflicting damage on another State and a situation where waiting instead of fighting increases the threat of a strike. A preventive strike can only be legitimated when these three criteria are satisfied.”<sup>38</sup>

In contrast, a “preemptive war,” a war to quash possible dangers is not included and thus is rejected in international law. In a word, international law doesn’t recognize either preemptive wars or preemptive strikes. “Preemptive military strike” is a new doctrinal concept that Americans have sought to enforce in international groups since 2002 with the Bush Doctrine. The 1995 report of the strategic command of the United States (STRATCOM) already provided



that reaction to a threat could be preemptive.<sup>39</sup> However this policy could not be put in effect. But is there any evident of past preemption strategy on the part of any nation-state?

Yes, preemptive strikes have occurred in the past.

- “The Caroline Incident” – a ship owned by United States Nationals that was allegedly providing assistance to rebels in Canada. While moored on United States side of Niagara River, British troops crossed the river, boarded the ship, killed several United States Nationals, burned the ship and sent it over the falls. The British claimed they were acting in Self Defense.<sup>40</sup>
- In the summer of 1756, the major powers of the Austrian-led alliance were poised for an attack on Prussia, and Frederick the Great, a believer in attacking first, invaded Saxony which set off the Seven Years War.<sup>41</sup>
- In 1904 the Japanese fleet launched a surprise attack and siege on Russia’s naval squadron at Port Arthur in order to force Russia to abandon its expansionist policy in the Far East.<sup>42</sup>
- Israel’s resort to preemptive attacks on Egypt in 1956 after Egypt blocked the Suez Canal and the Gulf of Agada to Israeli shipping combined with the increased fedayeen attacks; the Israeli attack on an Iraqi nuclear reactor and the bombardment of a suspected poison gas factory in the Sudan in 1998.<sup>43</sup>

What criteria must be in place for a preemptive action to be legal or within the framework of international law? When Article 51 was approved, the United Nations was considering a completely different world—a world of Nation-States, one in which terrorists did not attack very often using asymmetric tactics and with such great intensity. The United Nations 2004 Report of the High-level Panel on Threats, Challenges and Change addresses circumstances in which effective collective security may require the backing of military force, starting with the rules of international law that must govern any decision to go to war, if anarchy is not to prevail.<sup>44</sup> Since the development of Article 51, *The New York Times* observed: nearly 150 wars or skirmishes have occurred in which thousands of people have died - more civilians than soldiers by most accounts - and hundreds of thousands have become refugees.<sup>45</sup> However, one does not have to go back 15, 10 or even five years to know that things have changed. An NBC News analysis of Islamic terrorism since 11 September 2001, revealed that attacks are on the rise worldwide: “Of the roughly 2,929 terrorism-related deaths around the world since the attacks on New York and Washington, the NBC News analysis shows 58 percent of them--1709--have occurred this year.”<sup>46</sup> “While fewer than 60 of the deaths since September 11 have been American citizens (excluding military personnel), other countries continue to suffer at higher levels than ever

before.”<sup>47</sup> Indeed, “Both the number of incidents and the toll in victims increased sharply in 2003, according to the State Department.”<sup>48</sup> The world has surely changed since 1945. So should Article 51.

## **ANALYSIS**

The objective is to make the United Nations more relevant regarding the use of force by revising Article 51. This Article makes no mention of preemption, so it falls short of addressing a method by which to determine when to use force in the world today.

In order to achieve the objective of addressing the use of force in the world today and of making the United Nations more relevant, Article 51 should be rewritten as follows: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. [In the case of preemptive action, Members will ensure that there is irrefutable evidence of an imminent attack to the Members’ nation-state and applies only to undeterrable threats such as those that come from non-state actors like terrorist or rogue states that support terrorists.]”<sup>49</sup> Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”<sup>50</sup>

What are the resources necessary to accomplish this course of action? The first direction in accomplishing this course of action is to recognize that a preemptive strike could violate one fundamental basis of world order and that is the principle of association and the need to observe community rules and bounds.<sup>51</sup> Indeed, cooperation and endorsement by Security Council Members is imperative if this process is to work. To achieve unity, there must be a willingness on the part of all involved to cooperate for the mutual good. Willingness must be a desire born of the heart-- not simply of the mind.<sup>52</sup>

Recent evidence shows possible support (willingness) from other nations who have been attacked by terrorists. For example:

- During the inter-state Russian-German consultations held in Yekaterinburg (regional center in the Urals federal district), Russian President Vladimir Putin said, “Russia reserves the right to preemptive strikes if such a practice remains in the world...We are against this, but we reserve the right to strike preemptive blows.”<sup>53</sup>

- Spain is another example of a nation that would consider engaging in preemptive strikes. The 11 March 2004 Madrid attacks were a series of coordinated terrorist bombings that targeted the commuter train system of Madrid, Spain which killed 191 people and wounded more than 1,800.<sup>54</sup>
- According to the *Command Post*, Iran has threatened a preemptive strike against United States troops. "We will not sit (with arms folded) to wait for what others will do to us," Iran's defense minister, Rear Admiral Ali Shamkhani told Al-Jazeera TV when asked if Iran would respond to a United States attack on its nuclear facilities.<sup>55</sup>
- John Howard unveiled a plan for "flying squads" of police to stop terrorist attacks in the region and stressed he would not hesitate to order a preemptive strike overseas, if needed to protect Australia. Australia first threatened to launch preemptive strikes two years ago after 88 Australians were killed in a bomb attack at two nightclubs on the Indonesian resort island of Bali, provoking a storm of protest in the region. There was widespread condemnation of the idea and warned Australia that Malaysia would forcefully protect its sovereignty.<sup>56</sup>
- The Defense Minister George Fernandez reiterated Indian warnings that Pakistan was a prime case for pre-emptive strikes. "There are enough reasons to launch such strikes against Pakistan, but I cannot make public statements on whatever actions that maybe taken, Fernandez told a meeting of ex-soldiers in this northern Indian desert city."<sup>57</sup> Fernandez said he endorsed Foreign Minister Yashwant Sinha's recent comments that India had a much better case to go for pre-emptive action against Pakistan than the United States has in Iraq.<sup>58</sup>
- China claims sovereignty over Taiwan and sees the tiny island as a breakaway province and has threatened to use military force against Taiwan. According to the recently released Annual Report on the Military Power of the People's Republic of China, the country's military doctrine now stresses elements such as surprise, deception and preemption." Furthermore, the report states that Beijing believes that "surprise is crucial" for the success of any military campaign.<sup>59</sup>

So as one can see, there is growing support around the world for preemptive strikes. But the United Nations Security Council believes that the Charter of the United Nations, properly understood and applied, is equal to the task and needs neither extension nor restriction of its long-understood scope. According to the United Nations, the task is not to find alternatives to the Security Council as a source of authority but to make it work better than it has.<sup>60</sup> Even Kofi Annan said the United Nations strike against Sierra Leone renegade militia known as the

Westside Boys was a “preemptive” one. “It was a preemptive strike against a group of rebels who were planning to attack the forces of the United Nations peacekeepers,” Annan told journalists on July 25, 2000.<sup>61</sup> These are examples of the world governments in direct defiance of the United Nations Charter. I would argue that now is the time to make the United Nations more relevant and revise Article 51 immediately.

What are the risks involved in failing to revise Article 51? The major risk would be to the people of the world: “the right to live our lives without fearing for our lives - what C. Vann Woodward described as the expectation of ‘free security’.”<sup>62</sup>

## OPTIONS

Others have suggested alternatives to the current United States National Security Strategy. Harfiah Haleem, author of *Islam and the Environment*, opines that because “Muslims are not allowed to attack preemptively,”<sup>63</sup> waiting until the actual attacks occur before taking any actions is more equitable from a worldwide perspective. Many religious beliefs prevent the endorsement of preemptive war, no matter what the good intentions of the aggressor may be. The leader of the United Church of Christ said, “While Iraq’s weapons potential is uncertain, the death that would be inflicted on all sides in a war is certain. We fear that war would only provoke greater regional instability and lead to the mass destruction it is intended to prevent.”<sup>64</sup> Archbishop Renato Martino, the president of the Vatican’s justice and peace council, said, “A preemptive war is a war of aggression, there’s no doubt; it is not a just war.”<sup>65</sup> Upon reviewing this Administration’s policy, Senator John Kerry believes that the United States should go through “excruciating discussions before reaching a decision [to attack preemptively].”<sup>66</sup> Mr. Kerry’s biography reports his belief that “all major decisions are Socratic exercises.”<sup>67</sup> He said that he would seek advice from many quarters, examine all angles and raise every doubt. It stands to reason, therefore, that words like “prevention” or “preemptive” would not be in his lexicon- at least not in the context of foreign policy or national defense. In direct contrast with the Bush Administration’s doctrine of preemptive action, he would conduct a so-called “global test,” before launching a preemptive attack.<sup>68</sup>

With regards to preventive and preemptive action, there remain two options for the international community: stay with the *status quo* or give up on the idea of deterrence and denial strategies and embrace preventive and preemptive war. Staying with the *status quo* sends a strong message to the terrorists that the world will remain vulnerable to their attacks, thereby leaving the door open to more attacks. To stay with the *status quo* creates an imbalance of ends (to defeat global terrorism) and ways (wait for terrorists to attack first). In short, it is an

ineffective strategy. It could be said that such thinking establishes a foundation for history to repeat itself. It has been noted that after WW I, “as Germany rearmed, an international arms control regime failed to take action even after ample evidence was uncovered of a clandestine rearmament program.”<sup>69</sup> As the Inter-Allied Control Commission (established in 1919 to conduct on-site inspections to guarantee German disarmament) concluded in its final report, issued in January 1927, that “Germany had never disarmed, had never had the intention of disarming, and for seven years had done everything in her power to deceive and ‘counter control’ the Commission appointed to control her disarmament.”<sup>70</sup> Would a preemptive strike have stopped WW II? Is it an ineffective strategy?

The preemptive strike strategy can be very effective, if properly implemented. Implementing the preemptive option sends a strong message to terrorists that the international community is going to hunt down terrorists whenever and wherever they can be found. It sends the message that the international community will be tough on terror and refuses to take a “wait and see” attitude. Thus this strategy restores a balance of **ends** and **ways**. So the United States’ National Security Council should review all of these options before implementing preemptive actions again, especially if an actual nation-state is involved (perhaps North Korea and Iran, which currently have Weapons of Mass Destruction). In any event, all means of national power should be exhausted before the discussion of preemptive action can begin.

## **RECOMMENDATION**

Article 51 of the United Nations Charter needs to be revised in order to address the 21<sup>st</sup> century’s global war on terrorism and the use of preemptive war. Regardless of the views of some skeptics, the United Nations will continue to play a major role in world events since this organization has significant impacts on every nation-state. Never again can any nation-state hope to enjoy protective isolation and freedom from terrorist attacks. All states are vulnerable to terrorist attacks. This very fact is forcing nation-states to seek peace and security through the auspices of the United Nations.

In order for the United Nations to become a more relevant organization, it must give both power and authority to its Members. This can be accomplished by revising Article 51 of the United Nations Charter to include the clause recommended earlier on preemptive action, “in the case of preemptive action, Members will ensure that there is irrefutable evidence of an imminent attack to the Members’ nation-state and applies only to undeterrable threats such as those that come from non-state actors like terrorists or rogue states that support terrorists.”<sup>71</sup> Inserting this clause will enable the United Nations to create an effective forum for carefully deliberating

preemptive uses of force. The process of revising Article 51 will lead to a healthy dialogue regarding when and if preemptive force should be used. The General Assembly and Security Council of the United Nations would then have the backing in international law to implement its mandates on issues regarding the use of preemptive force. The revision of Article 51 will eliminate the gap in international law that currently exists, thus allowing nations to honor and respect the United Nations decisions.

## **CONCLUSION**

Although many nation-states are starting to enjoy a measure of freedom, many live in a climate of fear, insecurity, and uncertainty. If they are to have hope for world peace under the auspices of the United Nations, this organization must establish more relevance. It cannot continue to act as a debating club or a sort of "pulse check" on the world's opinions. What will bring relevance to the UN? Short of a worldwide calamity, the United Nations' revision of Article 51 will bring this venerable forum into the mainstream of the 21<sup>st</sup> century international affairs.

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## ENDNOTES

<sup>1</sup> United Nations, Collective Security, *A More Secure World: Our Shared Responsibility*, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, pg 10.

<sup>2</sup> Ibid.

<sup>3</sup> The UN in Brief; Chapter 2, WHAT THE UN DOES FOR PEACE; available from <http://www.un.org/Over/brief2.html>; internet; accessed October 17, 2004.

<sup>4</sup> Ibid.

<sup>5</sup> United Nations, 9.

<sup>6</sup> The UN in Brief:Chapter 2, Ibid.

<sup>7</sup> History of Iran, Iran-Iraq War 1980-1988; available from <http://www.anglefire.com/nt/Gilgamesh/iran.html>; internet; accessed 12 February 2005.

<sup>8</sup> The UN in Brief: Chapter 2, Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> The UN in Brief: Chapter 1, HOW THE UN WORKS; available from <http://www.un.org/Overview/brief1.html>; internet; access October 17, 2004.

<sup>12</sup> Stephen Schiesinger, "Can the United Nations Reform?" *World Policy Journal*, Vol. 14, no.3 (Fall 1997). Available from <http://www.mtholyoke.edu/acad/intrel/schles.htm>; internet; accessed 3 March 2005.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Peter Kropotkin, The Assassination of Alexander II, excerpted from *Readings in Modern European History*, James Harvey Robinson and Charles Beard, eds., vol. 2 (Boston: Ginn and Company, 1908), pp. 362-363; available from <http://www.the> accessed internet 29 January 2005.

<sup>16</sup> MARIE FRANVOIS SADI CARNOT. Love TO Know 1911 Online Encyclopedia, 2003, 2004 Love To Know; available from [http://39.1911encyclopedia.org/C/CA/CARNOT\\_MARIE\\_FRANVOIS\\_SADI.htm](http://39.1911encyclopedia.org/C/CA/CARNOT_MARIE_FRANVOIS_SADI.htm); internet; accessed 29 January 2005.

<sup>17</sup> Walter Laqueur, World of Terror, National Geographic Magazine, <http://magma.nationalgeographic.com/ngm/0411/feature4/>; accessed internet January 1, 2005.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.



<sup>20</sup> United Nations, 52.

<sup>21</sup> Terrorist Attacks (within the United States or against Americans abroad), available from <http://www.infoplease.com/ipa/A0001454.html>; internet; accessed January 15, 2005.

<sup>22</sup> What does the United Nations do to promote Peace and Security? Available from [http://www.un.org/geninfo/ir/ch2/ch2\\_txt.htm](http://www.un.org/geninfo/ir/ch2/ch2_txt.htm); internet; accessed October 17, 2004.

<sup>23</sup> George W. Bush, The National Security Strategy of the United States of America, (Washington, D.C.): The White House, September 2002, 15.

<sup>24</sup> Ibid.

<sup>25</sup> Colin L. Powell, "A Strategy of Partnership", January/February 2004: available from <http://www.cdi.or/news/law/policy-watch-powell-fa.cfm>; internet; accessed September 21, 2004.

<sup>26</sup> William Kristol, Vice President Cheney's Speech on Preemptive Military Action, August 26, 2002, <http://www.gulfinvestigations.net/document495.html>.

<sup>27</sup> James A. Russell, "U.S. Policy on Preventive and War and Preemption", *The Nonproliferation Review* (Spring 2003): 113-122.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Preventive and Preemptive War, <http://www.dtic.mil/doctrine/jel/daddict/data/p/04178.html>.

<sup>32</sup> BBC NEWS, [http://news.bbc.co.uk/2/hi/middle\\_east/3661134.stm](http://news.bbc.co.uk/2/hi/middle_east/3661134.stm), September 10, 2004. Accessed September 29, 2004.

<sup>33</sup> Charter of the United Nations, available from <http://www.un.org/overview/charter/html> internet; accessed September 21, 2004.

<sup>34</sup> US Constitution, Article 6: Clause 2; <http://www.house.gov/Constitution/Constitution.html>

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Anthony C. Arend, "International Law and the Preemptive Use of Military Force", *Washington Quarterly*, (Autumn 2003): Vol 26, 129-142.

<sup>41</sup> Paul W. Schroeder, *The American Conservative*, The Case Against Preemptive War; <[http://www.amconmag.com/10\\_21/iraq.html](http://www.amconmag.com/10_21/iraq.html).

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> United Nations, Collective Security, A more secure world: Our shared responsibility, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, pg 10.

<sup>45</sup> United Nations, <[http://quotes.watchtower.ca/united\\_nations.htm](http://quotes.watchtower.ca/united_nations.htm), p 9; accessed internet January 30, 2005.

<sup>46</sup> Robert Rivas and Robert Windrem, MSNBC.com, "Worldwide terrorism-related deaths on the rise, <<http://www.msnbc.msn.com/id/>; internet; accessed September 21, 2004.

<sup>47</sup> Ibid.

<sup>48</sup> CNN.com, "Terror attacks increased in 2003", June 14, 2004. Available <<http://www.cnn.com/2004/US/06/10/powell.terror.report.ap>. Accessed September 21, 2004.

<sup>49</sup> This revision of Article 51 comes from a combination of several sources/ideas. It synthesized the world's opinion of preemptive strike and how to deal with terrorism and thereby address the rules and guidelines established by the United Nations on the use of force. The Secretary-General's High-level Panel states the following should always be considered in regards to the use of force: a) Seriousness of threat. b) Proper purpose. c) Last resort. d) Proportional means. e) Balance of consequences

<sup>50</sup> The UN in Brief: available from < <http://www.un.org/Overview/brief2.html>: internet access October 17, 2004.

<sup>51</sup> The American Conservative, "The Case Against Preemptive War", <[http://www.amconmag.com/10\\_21/iraq.html](http://www.amconmag.com/10_21/iraq.html), pg 11, accessed 10 January 2005.

<sup>52</sup> New World Translation of the Holy Scriptures, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., 1984, 1217

<sup>53</sup> Johnson's Russia List, President Putin: Russia Reserves The Right To Pre-emptive Strikes, <<http://www.cdi.org/russia/johnson/7360-2.cfm>.

<sup>54</sup> Wikipedia, the free encyclopedia, <[http://www.en.wikipedia.org/wiki/March\\_11,\\_2004\\_madrid\\_attacks](http://www.en.wikipedia.org/wiki/March_11,_2004_madrid_attacks); accessed the internet 30 January 2005.

<sup>55</sup> The Command Post, "Iran Threatens Preemptive Strike Against US Troops"; <[http://www.command-post.org/nk/2\\_archives/014610.html](http://www.command-post.org/nk/2_archives/014610.html).

<sup>56</sup> A True Word, "Australian Pre-emptive Military Strikes: Political and Legal Implications", <<http://www.atrueword.com/index.php/article/articleview/40/1/2>.

<sup>57</sup> Ibid.

<sup>58</sup> Information Clearing House, "India Mulls 'Preemptive' Pakistan Strike, Cites U.S. Iraq War Precedent", <<http://www.informationclearinghouse.info/srarticle2867.html>.

<sup>59</sup> Doug Sample, American Forces Information Service, China's PLA Sees Value in Pre-emptive Strike Strategy; <[http://www.pentagon.gov/news/Aug2003/n08112003\\_200308116.html](http://www.pentagon.gov/news/Aug2003/n08112003_200308116.html); internet accessed January 16, 2004.

<sup>60</sup> United Nations and Collective Security, Report of the Secretary-General's high-level Panel on Threats, Challenges and Change; "Collective security and the use of force", pg 61.

<sup>61</sup> *Agence France Presse*, Annan Justifies UN's "Preemptive Strike" Against Sierra Leone Militia, July 25 2000; <<http://www.globalpolicy.org/security/issues/sierra/000725.htm>.

<sup>62</sup> John A. Nagl, "Documenting Strategic Vision", *The National Security Strategy*, September 2002, pg. 25.

<sup>63</sup> You Decide: Preemptive War, <<http://www.kqed.org/topics/news/perspectives/youdecide/pop/preemptive/2yes.html>.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Dennis Wagner, *The Arizona Republic*, Bush, Kerry pitch their anti-terror plans, September 12, 2004 <<http://www.azcentral.com/news/election/topstories/articles.html>. Accessed September 20, 2004.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> James A. Russell, "US policy on Prevention War and Preemption", *The Nonproliferation Review*, (Spring 2003), 121-122.

<sup>70</sup> Ibid.

<sup>71</sup> See endnote 49.

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